

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
MICHAEL HOWELL-HERNANDEZ,  
Defendant.

Case No.: 13-cr-1898-BEN

**ORDER DENYING MOTION TO  
REDUCE SENTENCE  
[Dkt. No. 54]**

Defendant moves for a reduction in his sentence under 18 U.S.C. § 3582(c), arguing that amendment 782 to the Sentencing Guidelines warrants the modification.

Section 3582(c)(2) establishes a two-step inquiry for sentence reduction proceedings. At the first step, the court decides eligibility for sentence reduction by determining whether the reduction is consistent with applicable policy statements issued by the Sentencing Commission. *United States v. Hernandez-Martinez*, 933 F.3d 1126, 1130 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 879, 205 L. Ed. 2d 491 (2020); *see also* *Dillon v. United States*, 560 U.S. 817, 826 (2010). “The policy statement applicable to § 3582(c)(2), United States Sentencing Guidelines Manual (“U.S.S.G.”) § 1B1.10, authorizes a sentence reduction if, but only if, the retroactive amendment has the “effect of lowering the defendant’s applicable Guidelines range.” *Id.* (citing U.S.S.G. §1B1.10(a)(2)(B)). To apply this policy statement, a court determines whether the Guidelines range is lowered by calculating the amended Guidelines range that would have been applicable to the defendant if the relevant Guidelines had been in effect at the

1 time the defendant was sentenced. *Id.* But that determination is not the end of the  
 2 eligibility inquiry. “Another provision of the policy statement . . . generally prohibits  
 3 sentence reduction if the original term of imprisonment is below the lower end of the  
 4 amended Guidelines range.” *Id.* (citing § 1B1.10(b)(2)(A)).

5 Defendant does not qualify for a sentence modification under amendment 782.  
 6 Defendant was convicted a jury of importation of 19.45 kilograms of methamphetamine,  
 7 in violation of Title 21 U.S.C. §952 and 960. He was sentenced in April 2014 (prior to  
 8 the amendment to the drug offense Guidelines) to 136-months in prison.

9 Pursuant to a pre-sentence sentencing agreement and waiver executed with the  
 10 advice of counsel, Defendant specifically and unequivocally waived any right to seek a  
 11 reduction under 18 U.S.C. § 3582(c) in exchange for a more lenient sentence  
 12 recommendation from the government. The agreement states in relevant part,

13 Defendant agrees not to seek a modification of his sentence pursuant  
 14 to 18 U.S.C. §3582(c), in the event that the Federal Guidelines are amended  
 15 on November 1, 2014 to revise the Drug Quantity Table in USSG § 2D1.1(c)  
 16 and are made retroactive. In exchange, the Government will recommend an  
 17 additional downward variance that is the equivalent of a two-level reduction  
 18 of the Base Offense Level as determined under USSG § 2D1.1(a) (5) and  
 (c), from the advisory guideline range as calculated by the Government  
 pursuant to this agreement.” Dkt. No. 48 (filed Apr. 21, 2014).

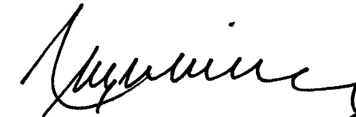
19 Defendant’s motion is barred by his waiver.

20 Moreover, even under the amended Guidelines, Defendant’s base offense level  
 21 would be reduced from 38 to 36 resulting in a Guidelines Range of 188 to 235-months.  
 22 The imposed sentence of 136-months remains below the low end of that range.

23 Therefore, Defendant’s Motion for Reduction in Sentence is Denied.

24 IT IS SO ORDERED.

25 DATED: May 28, 2020

26   
 27 HON. ROGER T. BENITEZ  
 28 United States District Court Judge